

RECEIVED

SEP 1 1981

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration :
of a Dispute Between :
VILLAGE OF WEST MILWAUKEE :
and : AWARD AND OPINION
WEST MILWAUKEE PROFESSIONAL :
POLICEMEN'S ASSOCIATION : Decision No. 18506-A

Case No.	XXIII No. 27421 MIA-561
Hearing Date	June 24, 1981
Appearances:	
For the Village	Lindner, Honzik, Marsack, Hayman & Walsh, S. C., Attorneys at Law, by MR. ROGER E. WALSH
For the Union	MR. PATRICK J. CORAGGIO, LEER Administrator MR. JOHN C. BUTORAC, Bargaining Representative
Arbitrator	MR. ROBERT J. MUELLER
Date of Award	August 31, 1981

BACKGROUND

The Village of West Milwaukee, hereinafter referred to as the "Village", and the West Milwaukee Professional Policemen's Association, hereinafter referred to as the "Association", reached an impasse in negotiations on the terms and provisions of the collective bargaining agreement for calendar year 1981. On January 23, 1981, the Association petitioned the Wisconsin Employment Relations Commission for final and binding arbitration pursuant to Wis. Stats. 111.77(3). Subsequent processing of the petition resulted in the undersigned being selected and appointed to serve as arbitrator to resolve the dispute by order of the WERC dated March 24, 1981. The sole issue at impasse between the parties concerned that of the wage rates to be incorporated in the 1981 agreement, which had been fully negotiated and agreed upon between the parties as to all other terms and provisions therein.

The final offers of the respective parties as submitted to the WERC investigator on March 5, 1981, and which remained unchanged and were presented and argued in this arbitration proceedings were as follows:

Association Final Offer:

- "(1) Wages - effective January 1, 1981, a 9.75% increase across the board on all steps and classifications rates in effect as of December 31, 1980."

Village Final Offer:

- "(1) Wages - the monthly salaries effective January 1, 1981 shall be as follows:

<u>Sergeant, Detective</u> <u>Juvenile Officer/Detective</u>	
First Year	\$1,862.50
Second Year	\$1,929.50
<u>Patrolmen</u>	
First Year	\$1,327.40
Second Year	\$1,437.50
Third Year	\$1,548.50
Fourth Year	\$1,658.50
Fifth Year	\$1,781.50"

The subject matter came on for hearing before the undersigned on June 24, 1981, at which time the parties were present at the hearing and presented such evidence, testimony and arguments as they deemed relevant. Post hearing briefs were filed with the arbitrator and received on July 28, 1981.

ISSUE

The issue to be determined by the arbitrator in this case is that of selecting either the final offer of the Association or the final offer of the Village as the offer to be incorporated into the collective bargaining agreement of the parties for the year 1981, which selection shall be pursuant to the form two proceedings specified in Wis. Stats. 111.77(4), (b) and pursuant to the factors specified in Wis. Stats. 111.77(6).

ARGUMENTS OF THE PARTIES AND DISCUSSION

It should be noted at the outset that no issue was raised between the parties in this case concerning factor (a) of the statutory factors involving "the lawful authority of the employer" nor of that part of factor (c) involving "the financial ability of the unit of Government to meet these costs."

The documentary evidence presented by both parties and the arguments advanced thereon related to and were directed at the respective levels of wages and total compensation received by the employees in previous years back to approximately 1976, comparisons of the relative comparative standings of the employees with other police units and specifically fire department employees of the Village, comparison of the comparative status of the bargaining unit employees as reflected by the final offer of each of the parties, and cost of living consideration.

The Association computes the total dollar difference existing between the two final offers as constituting a sum of \$1,521.60 for the contract year. The Association contends that their offer is designed to simply maintain its historical relationship with the approximately thirty other police departments in the Milwaukee metropolitan area and with other employees in the Village, specifically employees of the Village Fire Department. The Association contends that the Village has reversed its position from one year ago when the parties were in final and binding arbitration before another arbitrator in that in such prior case, the Village had argued a comparison to a larger number of other police departments and had argued maintenance of their historical relationship with the fire department employees, whereas in this case, the Association contends that the employer has limited its comparisons to those suburban police departments lying south and west of the Village and excluded those previously claimed comparables lying in other parts of the Milwaukee metropolitan area and has further reversed its argument with respect to maintaining its historical relationship with the fire department employees.

The Union addressed its argument as to such relationship in its brief as follows:

"The Village has continued the same relationship with the West Milwaukee firefighters and police over the last five years as evidenced by Association Exhibit No. 3, Pages 3 and 4, which indicates that in 1976 the police and fire at top pay were only \$33.85 apart. In 1977 these same two job classifications reflected only a \$38.85 separation in monthly wages; 1978 - \$41.37; 1979 - \$32.37; in 1980 - \$32.37. Thus, a West Milwaukee police officer with five (5) years experience has received a base monthly wage averaging \$33.38 over that received by a Village fireman. If the Association offer is accepted this relationship will be maintained, reflecting a base monthly wage differential of \$31.51 for 1981. If the Village final offer is accepted the difference between the two positions will be \$18.91, thus breaking the five year historical relationship. Moreover, the Village historically has taken the position that the firefighters and police officers should maintain a close relationship in their salaries up to and including the arbitration of 1980."

The Union also contended that the firefighters received the same settlement as did the police officers for the year 1980 and that for the current year of 1981, that the Village and firefighters have reached agreement on a ten percent wage increase settlement effective 1-1-81. They contend that if the Village's final offer is adopted in this case, that the wage increase for the year that will be received by the police officers in 1981 will amount to \$10.32 less than that annual increase that will be received by the firemen thru their voluntary settlement.

The Village addressed the relationship issue in its brief as follows:

"...In the 1980 MIA proceeding, the Village argued that one of the reasons the Village's offer should be selected by the Arbitrator was to:

'maintain a \$33 spread between Fire-fighters and Police.' (page 10 of Zeidler award)

"The Association, in 1980, rejected that argument, as pointed out by Arbitrator Zeidler:

'The Association sees no merit in the Village contention that the Village maintained a \$33 spread between Fire-fighters and Police. The fact is that the Fire-fighters received a larger percentage increase.' (p. 10 of Zeidler brief) (See also Empl. Ex. 30, which refers to the Association's position to that effect in its Reply Brief in the 1980 proceeding.)

"Now, apparently, the Association sees substantial merit in retaining the same dollar spread between Fire-fighters and Police. The Association now states, on page 4 of its Exhibit 3:

'Summary

'The West Milwaukee Police Officer with 5 years experience has enjoyed on the average a \$33.38 higher base monthly salary during the years since 1976. The Association's offer is (sic) accepted would continue this historic relationship between police and fire.'

"However, the Village is also able to revise its arguments (in Attorney Abraham Lincoln like fashion) and now takes the same view of the Association's position that the Association did toward the Village's last year, i.e.:

'The (Association) suggests that it is appropriate to maintain an approximate \$33.00 per month spread between firefighters and policemen. It does so without giving any reason therefore.' (Amendment of Empl. Ex. 30, with emphasis added)

"The Village is very concerned with the way the various Police Association, Firefighters' Unions, WERC and Arbitrators are handling the Police-Fire wage relationship within a particular municipality.

"Last year, when the Village argued that the old dollar differential should be retained, the Association said dollar differentials are meaningless. This year the Association contends that it is important to retain dollar differentials.

"Last year, when the Village attempted to maintain the historic spread between its policemen and firefighters in a final offer to the firefighters, the Wisconsin Employment Relations Commission rejected that attempt. (Empl. Ex. 28). In that year's firefighter MIA proceeding (which was resolved prior to an arbitration award), the Village had proposed that the firefighter wage rates be \$33.00 per month below the applicable policemen's wage rate, since at the time the Village was ordered to submit its final offer, Arbitrator Zeidler's decision had not yet been rendered and the Village did not know what the exact policemen's wage rates would be. The firefighter's final offer in that proceeding amounted to a wage increase of 8%, effective January 1, 1980, and an additional 5%, effective July 1, 1980 (Empl. Ex. 27), which was even higher than the policemen's final offer of 8% and 3%. Although the Village desired to maintain the historic wage differential between its policemen and firefighters, the firefighters did not. Their final offer, if selected, would have brought the firefighters rates to within \$4.96 (rather than \$33) per month of the policemen's rates, if the policemen's final offer was

selected and to \$27.95 above the policemen's rate if the Village's final offer was selected.

"The WERC rejected the Village's attempt to frame its final offer as a relationship to policemen's wage rates, stating:

'The Village's offer was indefinite in that it did not set out proposed wage rates which were then ascertainable, making it impossible for the Association to make an intelligent decision as to whether to amend or maintain its final offer,' (Empl. Ex. 28, p. 10).

"Thus, the Village was put into an untenable position. If both the policemen and firefighters proceeded to arbitration, the only way the Village could maintain the old differential was to make the same dollar offer to each union and gamble that an arbitrator would select the Village's final offer in both cases. This is hardly the way to engage in labor negotiations."

In addition, the Village contended that the Village's offer is in fact equal to, if not greater than, that settled with the firefighters when one considers several additional fringe benefits that have been agreed upon. They reference such matters in their brief as follows:

"...In the West Milwaukee situation, the policemen were granted an additional holiday, which amounts to approximately \$85 per year or .4% of last year's wage rate. The firefighters received no additional holiday. The firefighters received an increase in clothing allowance (\$20 in 1980 and \$60 in 1981), but the policemen had already received their clothing allowance increases in 1978 and 1979. (Empl. Ex. 29). In addition, one of the major accomplishments in the 1979-1980 negotiations with the firefighters was the recognition by the Union of the Village's right to reduce the number of lieutenants on a platoon. The Union's withdrawal of its grievance as part of the contract settlement agreement (Empl. Ex. 31) will involve substantially more in cost savings to the Village than the slight additional wage cost of its firefighter settlement as compared with the cost of its wage offer to the policemen."

The arguments and positions of both parties contain considerable merit. The arbitrator is not unmindful of the fact that in most areas employers and unions do attempt to maintain a reasonable relationship between the wage rates of police and fire employees. In many cases, that is a major consideration in any wage settlement. On the other hand, the arbitrator can fully appreciate the position that the Village has found itself in in this case. In the 1980 arbitration, the arbitrator found that the Association's position, which is the one that the Village is now taking in this case, was entitled to the greater weight and consideration. It is desirable in all arbitration matters, and most if not all arbitrators ascribe to the principle, that it is desirable to maintain as much as possible, consistency between arbitration decisions and awards interpreting and construing labor contracts between the same parties. It would seem that the same type consistency would be desirable to have applied by different arbitrators in the same relationship and involving similar issues. Where a prior arbitration decision is based on sound reasoning, subsequent arbitrators generally will not determine a matter contrary to such sound reasoning and rationale.

It appears that Arbitrator Zeidler was faced with the argument that West Milwaukee police officers had ranked sixth

highest amongst approximately 25 listed comparables in 1976 and had slipped to fourteenth out of 25 by 1979. In preferring the Association offer which provided for a split increase that was designed to increase the year end rate so as to bring the Village back more nearly to its prior comparative standing, Arbitrator Zeidler stated and reasoned as follows:

"A question then arises on a matter more disputatious. This question is whether the Association offer which includes a year end 'lift' of 11.2% is justified, or whether it puts the Village too far out of line with such a year end rate.

"When the actual cost of the Association offer is compared to the decline of the employee's relative status over the years, the Association offer is the more reasonable. When the year end rate is considered, the Village offer is more reasonable. When weighing these two situations against each other, matter of actual cost, i.e., actual total annual wages, is the weightier. The element of decline was shown conclusively by Table III and by the drop in the status of West Milwaukee among municipalities in its own immediate area.

"The arbitrator, therefore, holds that the Association offer on base wages more nearly conforms to the criterion of comparability. In making this judgment, the arbitrator is in effect judging that actual annual cost here is more significant than year end rate in judging comparability. (page 12)"

The undersigned is in agreement with Arbitrator Zeidler to the effect that in most cases, a comparison of actual total annual wages is the more accurate measuring yardstick and one that normally should control, absent special considerations or situations such as those justifying a catch-up type situation.

In this case, Association Exhibit No. 3, page (11), reveals that West Milwaukee police officers ranked seventh out of 30 listed comparables as to annual base for 1980. It would therefore appear that the Association offer that was selected by Arbitrator Zeidler for the year 1980, did in fact effectuate its purpose and serve to place West Milwaukee back into its relative comparative position that it enjoyed in 1976. It therefore appears that there do not exist any special catch-up type considerations for the year 1981, similar to those that were before Arbitrator Zeidler in 1980.

In this case, the Village argues that the total annual earnings comparison is the one that should be given the greatest weight. The Association directed its argument more toward that of retaining historical comparability spread with the firefighters and at a comparison with the West Allis police department, which is immediately contiguous to the Village.

The Village utilized as exhibits in this case, certain exhibits that were presented by the Association in the 1980 arbitration case. Such exhibits contained comparisons of the Village to that of approximately 25 other police departments in the Milwaukee metropolitan area. The Village argued that such exhibits revealed that between 1976 and 1979, the Village has slipped from a sixth place ranking to thirteenth place. The total amount of increases granted by the Village during that same time period placed them at twenty-third out of the 25 police departments to which comparison was made. The Village's offers during that time period were \$228.00 below the average of the increases granted by such other communities.

They contended that it was on the basis of such facts that Arbitrator Zeidler was moved to adopt the Association's catch-up type offer that would bring the Village back into its previous relative position.

From 1979 through 1981, the Village points out that under the Village's offer, the increases afforded the West Milwaukee policemen will amount to approximately \$315.00 or 9.2% more than the average increases granted policemen in the other communities. That will then amount to an annual increase of \$87.00 or 1.3% more than such average. According to the Village, the West Milwaukee policemen will then move from a twelfth place ranking in 1980 to ninth place in 1981.

The Association pointed out that Arbitrator Zeidler, in his 1980 arbitration award, recognized the comparative relationship that has existed between that of West Allis and West Milwaukee. In this case, the Association contends that the historical relationship between West Allis and the Village would be changed significantly if the Village's final offer were adopted. They discuss such area of comparison in their brief as follows:

"In order to help determine the reasonableness of the Associations offer it is helpful to look to the long standing close relationship the Village of West Milwaukee has shared with its sister city West Allis. West Milwaukee and West Allis not only share a common boundary but also have an integrated school district, a mutual aid pact and a history of comparable salary levels. Association Exhibit No. 3, Page 7, illustrates that since 1977 the relationship between the annual base salary of a top patrolman in West Allis as compared to West Milwaukee has never had a great fluctuation. In 1977 there was a \$10.20 difference for the entire year; in 1979 a difference of \$38.40; in 1979 a difference of \$46.00; and in 1980, a difference of \$40.00. In 1981, if the Arbitrator selects the final offer of the Village this historical continuity will be broken and the West Allis police will go to a \$145.80 difference. If the Arbitrator selects the offer of the Association the historical continuity will be maintained and the difference will be \$5.40. Furthermore, in reviewing the historical ranking, it can be determined that over many years West Allis and West Milwaukee have maintained a close relationship in the standing of the Milwaukee area departments. (Association Exhibit No. 3, Pages 8, 9, 10 and 11.)

"If the Arbitrator selects the position of the Association in its final offer for 1981, West Allis will rank ninth and West Milwaukee eighth. If the Village's position is selected West Allis will rank ninth and West Milwaukee twelfth (sic)."

On considering the respective positions and arguments of both parties in this matter, the undersigned is of the considered judgment that in this case, the analysis and arguments of the Village is the more persuasive. Additionally, the comparative analysis engaged in by the Village was based on a broad grouping of other communities, similar, if not identical to the communities listed and referred to by the Association in the prior arbitration case. In addition, the undersigned is of the belief that giving greater weight to the consideration of total annual compensation and comparison on a broader comparative basis, constitutes a comparative analysis that is more consistent and in keeping with that approach employed by Arbitrator Zeidler, which approach this arbitrator finds to be well reasoned and rationally sound.

With respect to the comparison of the Village police officers to that of the Village firefighters, the arbitrator recognizes that while the total compensation difference between the two will be narrowed by the Village's offer, such fact is somewhat nullified by the fact that the total monetary offer of the Village, as offered to the police officers, is relatively equal to that level of settlement reached with the firefighters when one includes the cost of the additional holiday. It therefore appears that the consideration of the historical spread between police officers and firefighters is one that should not be entitled to as much weight as the total compensation comparison with a broad grouping of other communities and their police departments. With respect to such comparison, the undersigned finds that the Village's final offer reasonably maintains the Village's standing among the large group of comparables at a reasonable point. Absent there being other evidence sufficient to persuade one that the Village police officers should be at a higher comparative standing with their counter parts in other comparable communities, its relative standing that it would enjoy as a result of the Village's final offer, is found not to be unreasonable.

Both parties entered argument and evidence contending that each of their final offers was more favorably supported by the increase in the cost of living.

The Association pointed out that the cost of living for the Milwaukee area increased 12.9% based on the January 1980 to January 1981 index. They contended that the 9.75% increase proposed by the Association is therefore more consistent and in line with the increase in the Consumer Price Index.

The Village contended that as of the date of submission of the final offers of the parties on March 5, 1981, that the annual rate of increase of the cost of living at that time was 11.7%. They point out that since such date, the annualized rate of increase has been declining and was 9.6% in June of 1981. The Village also contends that the Consumer Price Index has come under considerable criticism as not being a true measurement of inflation and referred to the Personal Consumption Expenditures Deflator Index which measured the rate of inflation as being 10.2% in 1980 and being at the rate of 7.9% during the first quarter of 1981. The Village contends that their final offer amounts to an increase in annual earnings of 10.6% plus an additional .4% increase by the addition of one holiday and that such offer is well within and consistent with the rise in inflation.

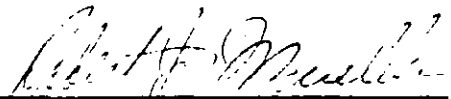
The arbitrator is unable to afford a great deal of weight to the cost of living consideration. In the first place, the CPI index is in fact one that has been receiving increasing consideration as not being a true measurement of inflationary impact on the average consumer. Even if one were to consider the CPI index without modification or consideration of the CPE index, the differences between the two offers are so slight that one would be moved only to slightly favor the Association offer under those circumstances. In the judgment of the undersigned, the CPE index and theories underlying such index, are entitled to some consideration and to some extent serve to modify the literal application of the CPI index figures. The arbitrator therefore determines that the cost of living consideration is one that does not impact to any great degree on either offer. In the judgment of the undersigned, the consideration to be given the greater weight in this case consists of those comparability considerations hereinabove discussed.

It therefore follows on the basis of the above facts and consideration thereof, that the undersigned renders the following decision and

AWARD

That the final offer of the Village is adopted as the more reasonable and the parties are directed to incorporate such offer in the labor agreement of the parties as provided by statute.

Dated at Madison, Wisconsin, this 31st day of August, 1981.


Robert J. Mueller
Arbitrator